

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-4130

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United States of America,

Appellee,

v.

Latayo Raymond Clark,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* District of Nebraska.  
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\* [UNPUBLISHED]  
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Submitted: August 7, 2003  
Filed: August 14, 2003

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Before BOWMAN, BYE, and MELLOY, Circuit Judges.

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PER CURIAM.

In this direct criminal appeal, Clark challenges the sentence the district court<sup>1</sup> imposed after he pleaded guilty to conspiring to distribute, and to possess with intent to distribute, 50 grams or more of a substance containing cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1), 846. The district court sentenced Clark to 120 months imprisonment and 5 years supervised release. On appeal, Clark's counsel has

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<sup>1</sup>The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

moved to withdraw under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred in denying Clark's motion for a downward departure.

The district court's decision not to grant the downward departure was clearly discretionary; thus, the decision is unreviewable. See United States v. VanHouten, 307 F.3d 693, 696 (8th Cir. 2002) (discretionary decision not to depart from Guidelines is unreviewable on appeal absent unconstitutional motive, unless district court erroneously concluded it lacked authority to depart).

Following careful review of the record, we find no other nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75, 80 (1988). Accordingly, the judgment is affirmed. We also deny Clark's pending motion and grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.